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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on September 18, 2003, at the Sheraton Gateway Hotel, Los Angeles Airport, Grand Ballroom B, 6101 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the General meeting to order at 10:43 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Angelo Quaranta (departed 12:00 p.m.)	Howard Weinberg
	Alan J. Skobin	General Counsel
	Glenn E. Stevens	Robin Parker
		Senior Staff Counsel
Absent:	David C. Lizárraga	
	David W. Wilson	

3. **APPROVAL OF THE MINUTES FROM THE JUNE 17, 2003, GENERAL MEETING, AND JULY 21, 2003, AND AUGUST 27, 2003, SPECIAL MEETINGS**

Mr. Skobin moved to adopt the June 17, 2003, General Board meeting minutes. Mr. Flesh seconded the motion. The motion carried unanimously.

Mr. Flesh moved to adopt the July 21, 2003, Special Board meeting minutes. Mr. Quaranta seconded the motion. The motion carried unanimously.

Mr. Quaranta moved to adopt the August 27, 2003, Special Board meeting minutes. Mr. Skobin seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO SOLON SOTERAS, FORMER PUBLIC MEMBER**

This matter was postponed pending Mr. Soteras' arrival.

5. **PRESENTATION OF RESOLUTION TO WENDY BROGIN, FORMER PUBLIC MEMBER**

At the June 17, 2003, General meeting, the members unanimously moved to present Wendy Brogin with a Resolution for her service as a Public Board member. Mr. Stevens presented the Resolution to Mrs. Brogin on behalf of the members and staff.

6. **DISCUSSION WITH ED COX, PRESIDENT, SUNSET BUS, CONCERNING THE SHUTTLE BUS INDUSTRY AS IT RELATES TO DEALER TERRITORIES, UNLICENSED DEALERS, DMV LICENSING, COMMERCIAL DRIVERS LICENSES, DEALER PREPARATION AND PRE-DELIVERY PAYMENTS, AND REIMBURSEMENT FOR WARRANTY CLAIMS – BOARD DEVELOPMENT COMMITTEE**

Ed Cox, President, Sunset Bus, addressed the members and audience on the shuttle bus industry. Mr. Cox discussed dealer territories, unlicensed dealers, DMV licensing, commercial drivers licenses, dealer preparation and pre-delivery payments, and reimbursement for warranty claims. Mr. Novi indicated that he would follow-up with Mr. Cox to further address his concerns with DMV and the Board.

7. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CONSIDERATION OF PROPOSED DECISION

Long Beach Honda v. American Honda Motor Company, Inc.
Protest No. PR-1835-02

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. There was no appearance for Protestant. Tad Allan, Esq., and Eric Kizirian, Esq. of O'Melveny & Myers represented Respondent.

After consideration of the oral arguments, the Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Quaranta seconded the motion. The motion carried unanimously.

8. **OPEN SESSION**

The Public members returned to Open Session. Mr. Stevens announced the decision in Agenda item no. 7.

4. **PRESENTATION OF RESOLUTION TO SOLON SOTERAS, FORMER PUBLIC MEMBER**

At the June 17, 2003, General meeting, the members unanimously moved to present Solon C. Soteris with a Resolution for his service as a Public Board member. Mr. Stevens presented the Resolution to Mr. Soteris on behalf of the members and staff.

15. **CONSIDERATION OF EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

This agenda item was taken out of order.

At the July 18, 2000, meeting, the members adopted an Employee Recognition Award Program to award staff for their accomplishments. The staff submitted employee nominations to the Board Development Committee, Tom Flesh, and the Committee ultimately recommended Susanna Badalyan-Deus as the recipient. Ms. Badalyan-Deus is a Service Assistant in the Consumer Program. She is being recognized for her excellent job performance and outstanding customer service in handling extra calls when other staff are unavailable, and her courteous handling of consumers who call with complaints. Her highly organized and efficient manner in processing voluminous amounts of letters for the mediation services representatives, thoroughly researching complex issues, and assisting in administrative matters, are greatly appreciated by all. She has been commended for her outstanding abilities to complete projects in a timely and accurate manner, is highly organized and efficient, and her positive attitude makes working with her a pleasure. Mr. Flesh moved to adopt the Committee's recommendation. Mr. Quaranta seconded the motion. The motion carried unanimously.

At this time, the Board lost its quorum and the remaining agenda items were reported for informational purposes only.

9. **DISCUSSION CONCERNING THE EFFECT OF THE DECISION IN MAZDA MOTOR OF AMERICA, INC. V. CALIFORNIA NEW MOTOR VEHICLE BOARD; PHILLIPS MAZDA, REAL PARTY IN INTEREST (2003 DJDAR 8591) ON THE BOARD'S OPERATIONS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi, Howard Weinberg, and Robin Parker concerning the effect of the decision in *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; Phillips Mazda, Real Party in Interest* (110 Cal.App.4th 1451) on the Board's operations. Mr. Weinberg reported on the effect of the decision on pending petitions and the recently decided *Bob Baker* matter. Mr. Stevens requested that the pending licensee versus licensee petitions be issued Orders

to Show Cause why the matters should not be dismissed without prejudice in light of the decision and requested a briefing schedule be established thereon.

10. **REPORT ON NONSUBSTANTIVE CHANGES TO TEXT OF SECTIONS 551.10 (MOTIONS AND COSTS FOR CHANGES IN VENUE) AND 553 (BOARD ANNUAL FEE) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS THAT TAKE EFFECT ON SEPTEMBER 20, 2003 - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning nonsubstantive regulatory changes suggested by the Office of Administrative Law during its review of the Board's rulemaking packet for sections 551.10 and 553 of Title 13 of the California Code of Regulations.

11. **STATUS REPORT CONCERNING THE BOARD'S REVISED DOCUMENT REQUEST POLICY, WHICH WAIVES FEES UNDER \$6.00 - ADMINISTRATION COMMITTEE**

Ms. Parker indicated that at the September 6, 2001, General meeting, the Board revised its document request policy to allow for the waiver of fees on all document requests that total less than \$6.00. In the past 12 months, there have been 18 such waivers. Ms. Parker informed the members that the policy works wells and provides the Board's constituency good customer service. The annual report on this topic was changed to an exception report.

12. **ANNUAL UPDATE CONCERNING THE BOARD'S PERMANENT ELECTRONIC-MAILING LIST - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Board's permanent electronic mailing list. Mr. Novi reported that at the September 6, 2001, General meeting, the members made the Board's electronic mailing list permanent. Given that there are no problems with the system, this report was changed from an annual report to an exception report.

13. **SEMI-ANNUAL UPDATE CONCERNING THE NUMBER OF MONTHLY HITS TO THE BOARD'S WEB SITE AND WHERE INFORMATION IS BEING SOUGHT - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the semi-annual report on user "hits" to the Board's web site. Mr. Novi reported that in fiscal year 2002-2003, the website received an average of 821 hits per day. Mr. Novi suggested, and the Board agreed, that this report be changed to an annual report.

Mr. Branzuela requested that the staff investigate whether the *In-Site* could be sent via e-mail. In response to this request, the staff will send a public mailing to all entities on the mailing list requesting their e-mail addresses. Additionally, an article in the *In-Site* will be published in the next edition informing readers that the newsletter is available via

e-mail. The staff will report on the progress of this project at the November 7, 2003, General meeting.

14. **CONSIDERATION OF RECLASSIFICATION OF NEW MOTOR VEHICLE BOARD HEARING OFFICER I AND HEARING OFFICER II POSITIONS TO ADMINISTRATIVE LAW JUDGE - ADMINISTRATION COMMITTEE**

Given the Board's lack of quorum to consider this matter, it was continued to the November 7, 2003, General meeting.

16. **BOARD FINANCIAL CONDITION REPORT FOR FISCAL YEAR 2002-2003 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2002-2003. The Board expended 91% of its appropriated budget for fiscal year 2002-2003. Mr. Novi informed the members that the Board surplus was declining at a slower rate than projected. He also indicated that the amount charged for the annual Board fee would eventually need to be revisited.

17. **REPORT ON THE DEPARTMENT OF MOTOR VEHICLES ASSISTANCE IN STREAMLINING THE BOARD'S CASH DEPOSITS PROCESS - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter describing changes designed to streamline the Board's cash deposit process. Mr. Novi reported that the staff reduced the number of different procedures involved in cash deposits from four to one. The new procedure is more efficient for DMV and the Board. Mr. Novi indicated that this procedure is consistent with the 1996 Performance Audit and the Corrective Action Plan.

18. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE QUESTIONNAIRE CONCERNING THE BOARD'S 2ND ANNUAL INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the evaluation of the 2nd Annual Industry Roundtable. Ms. Parker reported that the feedback received from attendees was favorable. The members requested that the topics for the 3rd Annual Industry Roundtable be published in the *In-Site*.

19. **DISCUSSION CONCERNING THE BOARD'S PRACTICES WITH REGARDS TO ISSUING PROTECTIVE ORDERS AND SEALING RECORDS IN HEARINGS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning the Board practice in issuing protective orders and sealing records in hearings. Mr. Weinberg provided the members with an overview of the

memo. Mr. Skobin requested that Mr. Weinberg research the topic of privacy rights for business entities and report back at the November 7, 2003, General meeting.

20. **STATUS ON THE IMPLEMENTATION OF THE REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Cara O'Neill-Stewart concerning the implementation of the revisions to the assignment of cases to Board Administrative Law Judges. At the April 24, 2003, General meeting, the members approved using Staff Counsel for Mandatory Settlement Conferences. Mr. Novi reported no problems with the revisions and there has been a decrease in Board personal services costs.

21. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
 - (1) Senate Bill 248 (Senator Murray)
 - (2) Senate Bill 298 (Senator Dunn)
 - (3) Assembly Bill 1718 (Committee on Transportation)
- b. Pending Legislation of general interest.
 - (1) Senate Bill 114 (Senator Torlakson)
 - (2) Senate Bill 146 (Senator Escutia)
 - (3) Senate Bill 584 (Senator Alarcon)
 - (4) Assembly Bill 309 (Assembly Member Chu)
- c. Legislation of general interest.
 - (1) Senate Bill 237 (Senator Florez) [Chaptered August 1, 2003]
 - (2) Senate Bill 508 (Senator Escutia) [Chaptered July 14, 2003]
 - (3) Assembly Bill 964 (Assembly Member Frommer) [Chaptered July 7, 2003]

The members were provided with an updated memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board, pending legislation of general interest, and legislation of general interest that has been signed by the Governor. The summary analyzes the current law, the legislation, and the impact on the Board.

22. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a report on Administrative Matters, which identified all pending projects, the Board manager and committee assigned, estimated completion dates, and status. Mr. Novi noted that contractual and fiscal difficulties with the credit card and document retention projects were causing delays.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker indicated that two new protests were filed since the report was generated. Additionally, Ms. Parker reported that *RDO Truck Riverside Co. v. Autocar, LLC* (PR-1830-02) was settled without the need of arbitration proceedings.

Mr. Weinberg reported that the Board was not participating via the Attorney General's Office in the *Bob Baker Ford* or *Daugherty Lincoln-Mercury* petitions for writ of administrative mandate because there was not an important state interest. Mr. Weinberg reported that a new court matter involving *Michael Volkswagen* was recently filed and it did not appear that the Board would participate in that case either.

23. **Adjournment.**

With no further business to discuss, the meeting was adjourned at 1:33 p.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____

Glenn E. Stevens
President
New Motor Vehicle Board